



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

DEC 20 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Allied Waste Niagara Falls Landfills LLC  
ATTN: David Grenier, Division Manager  
5600 Niagara Falls Boulevard  
Niagara Falls, NY 14304

7015 0640 0001 0675 5654

Re: Finding of Violation: EPA Docket No. CAA-02-2017-1601

Dear Mr. Grenier:

The United States Environmental Protection Agency (EPA) issues the enclosed Finding of Violation (FOV) to Allied Waste Niagara Falls Landfill LLC (Allied Waste) for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA), and the regulations promulgated pursuant to the CAA at Allied Waste's facility located at 5600 Niagara Falls Boulevard, New York. The FOV details Allied Waste's violations of Sections 111, 112, and 114 of the CAA; 40 C.F.R. Part 60, Subpart A (NSPS General Provisions), 40 C.F.R. Part 60, Subpart WWW (Landfill NSPS), 40 C.F.R. Part 63, Subpart A (Part 63 NESHAP General Provisions), and 40 C.F.R. Part 63, Subpart AAAA (Landfill MACT).


Enclosed you will also find the three Notices of Violations (NOVs) previously issued to Allied Waste by New York State Department of Conservation (NYSDEC). On January 25, 2016 and May 16, 2016, NYSDEC issued NOVs for violations of Subparts 257-1.4 and 211 of Title 6 of New York Codes, Rules and Regulations (6 NYCRR) for exceeding the Hydrogen Sulfide (H<sub>2</sub>S) Ambient Air Quality Standard codified in 6 NYCRR 257-10.3. On February 9, 2016, NYSDEC issued an NOV for violations of 6 NYCRR 360-1.14(m) for failure to operate the landfill in such a manner to effectively control odors so as to not constitute nuisances or hazards to health, safety, or property and 6 NYCRR 360-2.17(f) for failing to operate the landfill in such a manner to control decomposition gases to avoid hazards to health, safety, or property. We are including the previously issued NOVs to facilitate discussion of the violations found at the Allied Waste facility.

If Allied Waste would like to schedule a conference to discuss the FOV and NOVs with EPA and NYSDEC, please have your legal counsel contact Denise Leong, Assistant Regional Counsel, at [leong.denise@epa.gov](mailto:leong.denise@epa.gov) or 212-637-3214, within ten days of your receipt of this letter. Should you have

technical questions please contact Joseph Cardile or Phillip Ritz, Environmental Engineers, at [cardile.joseph@epa.gov](mailto:cardile.joseph@epa.gov) or [ritz.phillip@epa.gov](mailto:ritz.phillip@epa.gov).

Sincerely,



 Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures : EPA Finding of Violation, CAA-02-2017-1601  
NYSDEC Notice of Violation dated January 25, 2016  
NYSDEC Notice of Violation dated February 9, 2016  
NYSDEC Notice of Violation dated May 16, 2016

cc: Robert Stanton, Director  
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Buffalo, NY 14203

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

**Allied Waste Niagara Falls Landfill, LLC**

RESPONDENTS

**FINDING OF VIOLATION**

CAA-02-2017-1601

**I. SUMMARY**

The United States Environmental Protection Agency ("EPA") Region 2 Director of the Division of Enforcement and Compliance Assistance ("DECA") issues this FINDING OF VIOLATION ("FOV") pursuant to the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7401 *et seq.*, to Allied Waste Niagara Falls Landfill, LLC ("Allied Waste" or "Respondent") to notify of violations of the CAA and its implementing regulations at its Niagara Falls Landfill ("the Landfill" or the "Facility") located at 5600 Niagara Falls Road in Niagara Falls, New York. The authority to find such violations is delegated to the Director from the Administrator through the Regional Administrator.

As described in detail below, the Respondent has violated Sections 111 and 114 of the CAA by failing to comply with the "New Source Performance Standards for Municipal Solid Waste Landfills," 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. §§ 60.750 – 60.759 ("the Landfill NSPS"), and has violated Section 112 of the CAA by failing to comply with the "National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills," 40 C.F.R. Part 63, Subpart AAAA ("the Landfill MACT").

## **II. STATUTORY AND REGULATORY BACKGROUND**

### **Pertinent Statutory Provisions**

1. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes “an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.”
2. Section 101 of the CAA lists the purposes of the Act including, among others, to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population.
3. Section 111 of the CAA authorizes the EPA Administrator to promulgate regulations setting “standards of performance” for new sources of air pollution. *See* 42 U.S.C. §§ 7411(a) & (b). Section 111 further provides that after the effective date of any standard promulgated under Section 111, it shall be unlawful for any owner or operator of a new source to operate that source in violation of the standard. *See* 42 U.S.C. § 7411(e).
4. A “new source” is “any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.” 42 U.S.C. § 7411(a)(2).
5. Section 112 of the CAA authorizes the EPA Administrator to promulgate regulations setting emission standards for hazardous air pollutants identified in 42 U.S.C. § 7412(b). *See* 42 U.S.C. § 7412(c)(2). It also permits the Administrator to promulgate design, equipment, work practice or operational standards, or a combination thereof, in lieu of emission standards. *Id.* § 7412(h)(1). Section 112(i)(3)(A) of the Act provides that after the effective date of any standard, limitation or regulation promulgated pursuant to Section 112 and applicable to a



source, no person may operate that source in violation of the standard, limitation or regulation, except in the case of existing sources. For existing sources, Section 112(i)(3)(A) directs the EPA Administrator to establish a compliance deadline that provides for compliance as expeditiously as practicable and in no event later than 3 years after the effective date of the standard.

6. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, recordkeeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

#### NSPS General Provisions

7. Pursuant to Section 111 of the CAA, EPA promulgated the "Standards of Performance for New Stationary Sources," 40 C.F.R. Part 60, Subpart A, 40 C.F.R. §§ 60.1 – 60.19, previously defined as the NSPS General Provisions.

8. 40 C.F.R. § 60.1 provides that, with exceptions provided in 40 C.F.R. Part 60, Subparts B and C, the NSPS General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any Part 60 standards (or, if earlier, the date of the publication of any proposed standard) applicable to the facility.

9. 40 C.F.R. § 60.2 defines "affected facility," with reference to a stationary source, as any apparatus to which a standard is applicable.

10. 40 C.F.R. § 60.2 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is part.

11. 40 C.F.R. § 60.2 defines “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

12. 40 C.F.R. § 60.11(d) provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

#### The Landfill NSPS

13. On March 12, 1996, under the authority of Section 111(b) of the Act, EPA promulgated “New Source Performance Standards for Municipal Solid Waste Landfills,” 40 C.F.R. Part 60, Subpart WWW, § 60.750 *et seq.*, otherwise known as the “Landfill NSPS.” *See* 61 Fed. Reg. 9905 (March 12, 1996). In addition, portions of the Landfill NSPS were promulgated pursuant to the authority granted by Section 114 of the CAA. *Id.* at 9913.

14. The Landfill NSPS applies to municipal solid waste (“MSW”) landfills that commenced construction, modification or reconstruction on or after May 30, 1991. *See* 40 C.F.R. § 60.750(a).

15. 40 C.F.R. § 60.751 defines an “MSW Landfill” as an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D waste, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publically or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

16. 40 C.F.R. § 60.751 also defines “modification.” It provides that “modification” means “an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991.”

17. Thus, an MSW landfill that increases its permitted volume design capacity on or after May 30, 1991, is subject to the requirements of the Landfill NSPS. *See* 40 C.F.R. § 60.751 (defining modification) and 40 C.F.R. § 60.750(a) (providing that the Landfill NSPS requirements apply to MSW landfills modified after May 30, 1991).

18. 40 C.F.R. § 60.751 defines “household waste” as any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.)

19. 40 C.F.R. § 60.751 defines “solid waste” as any garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

20. 40 C.F.R. § 60.752(a) provides that owners and operators of MSW landfills with a design capacity of less than 2.5 million Mg by mass or 2.5 million m<sup>3</sup> by volume must submit an initial design capacity report to the Administrator as specified in 40 C.F.R. § 60.757(a).

40 C.F.R. § 60.752(a)(1) further provides that the owner or operator must submit to the Administrator amended design capacity reports, as specified in 40 C.F.R. § 60.757(a)(3).

21. 40 C.F.R. § 60.752(b) provides that owners and operators of MSW landfills with a design capacity greater than 2.5 million Mg by mass or 2.5 million m<sup>3</sup> by volume may demonstrate that their non-methane organic compounds (NMOC) emission rate is below 50 Mg per year and recalculate the emission rate for the demonstration annually. 40 C.F.R. § 60.752(b)(2) provides that if the calculated NMOC emission rate is equal to or greater than 50 Mg per year, the owner or operator must comply with the gas collection and control system ("GCCS") requirements found in 40 C.F.R. § 60.752(b)(2) which include installation, routing all collected gas, and operation of the collection and control device. 40 C.F.R. § 60.752(b)(2)(i)(C) provides that the collection and control system design plan must either conform with the specifications in 40 C.F.R. § 60.759 or include, to the Administrator's satisfaction, alternative provisions to comply with 40 C.F.R. § 60.752(b).

22. 40 C.F.R. § 60.752(b)(2)(i) provides that if the calculated NMOC emission rate is equal to or greater than 50 Mg per year, the owner or operator must submit a GCCS design plan, prepared by a professional engineer, to the Administrator within one year.

23. 40 C.F.R. § 60.754 provides procedures for MSW landfills to calculate the landfill NMOC, as applicable, to determine if the emission rate of the landfill equals or exceeds 50 Mg per year.

24. 40 C.F.R. §§ 60.752(b)(2), and 60.753 to 60.759, set forth operating, monitoring, compliance testing, reporting and recordkeeping requirements for the owners and operators of landfills that are seeking to comply with 40 C.F.R. § 60.752 by using a GCCS. After EPA approves the GCCS plans, the owner or operator of the landfill must install a GCCS at the landfill as required by 40 C.F.R. § 60.752(b)(2)(ii).

25. 40 C.F.R. § 60.755(d)(1) compliance provisions mandate that owners and operators seeking to comply with the methane operating and compliance standards of 40 C.F.R. §§ 60.753(d) and 60.755(c) must comply with instrumentation specifications and procedures for surface emission monitoring devices (e.g. Method 21). *See* 40 C.F.R. Part 60, Appendix A, Method 21.

26. 40 C.F.R. § 60.753(a) provides that owners and operators of MSW landfills with a GCCS used to comply with 40 C.F.R. § 60.752(b)(2)(ii) must operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for 5 years or more if active, or 2 years or more if closed or at final grade.

27. 40 C.F.R. § 60.753(b) provides that owners and operators of MSW landfills with a GCCS used to comply with 40 C.F.R. § 60.752(b)(2)(ii) must operate the collection system with negative pressure at each wellhead.

28. 40 C.F.R. § 60.753(c) provides for the operation of each interior wellhead in the collection system with a landfill gas temperature less than 55 °C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. The owner or operator may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.

29. 40 C.F.R. § 60.753(d) provides that owners and operators of MSW landfills with a GCCS used to comply with 40 C.F.R. § 60.752(b)(2)(ii) must operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill.



30. 40 C.F.R. § 60.753(e) provides that owners and operators of MSW landfills with a GCCS designed and operated to comply with 40 C.F.R. § 60.752(b)(2)(ii) must operate the system such that all collected gases are vented to a control system designed and operated in compliance with 40 C.F.R. § 60.752(b)(2)(iii).

31. 40 C.F.R. § 60.753(f) provides that owners and operators of MSW landfills must operate a GCCS at all times when the collected gas is routed to the system.

32. 40 C.F.R. § 60.755(a) provides that owners and operators of MSW landfills must monitor the GCCS for compliance with 40 C.F.R. § 60.752(b)(2)(ii) as specified in 40 C.F.R. §§ 60.755(a)(1) through (a)(6).

33. 40 C.F.R. § 60.755(c) provides procedures that shall be used for compliance with the surface methane operational standard provided in 40 C.F.R. § 60.753(d). 40 C.F.R. § 60.755(c)(4) provides that, after installation of a GCCS, the owner and operators of an MSW landfill must record, as a monitored exceedance, any reading of 500 ppm or more above background at any location. 40 C.F.R. § 60.755(c)(4) further provides that in the event of an exceedance of the 500 ppm threshold, the owners and operators must take the actions specified in 40 C.F.R. §§ 60.755(c)(4)(i) through 60.755(c)(4)(v).

34. 40 C.F.R. § 60.756(a) provides that owners and operators seeking to comply with 40 C.F.R. § 60.752(b)(2)(ii)(A) for an active gas collection system, must (1) install a sampling port and a thermometer at each wellhead and measure the gauge pressure in the gas collection header, (2) monitor nitrogen or oxygen concentrations in the landfill gas, and (3) monitor temperature of the landfill gas on a monthly basis.

35. 40 C.F.R. § 60.757(a) provides that for MSW landfills that commence construction, modification, or reconstruction on or after March 12, 1996, owners and operators

must submit an initial design capacity report to the Administrator 90 days after the date of commenced construction, modification, or reconstruction.

36. 40 C.F.R. § 60.757(a)(3) provides that, within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million Mg and 2.5 million m<sup>3</sup>, owners and operators of an MSW landfill must submit amended design capacity reports to the Administrator providing notice of an increase in the design capacity of the landfill.

37. 40 C.F.R. § 60.757(c) provides that, within one year after the date the initial emission rate report (or an annual emission rate report) first shows that the NMOC emission rate equals or exceeds 50 Mg per year, owners and operators of an MSW landfill must submit a GCCS design plan.

38. 40 C.F.R. § 60.757(f) provides that owners and operators of an MSW landfill seeking to comply with 40 C.F.R. § 60.752(b)(2) by using an active GCCS designed in accordance with § 60.752(b)(2)(ii) must submit annual reports of the recorded information specified in 40 C.F.R. §§ 60.757(f)(1) through (f)(6).

39. 40 C.F.R. § 60.758(c) provides that owners and operators must keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in 40 C.F.R. § 60.756, as well as for periods of operation during which the parameter boundaries established during the most recent performance tests, are exceeded.

40. 40 C.F.R. § 60.758(c)(4) provides that owners and operators seeking to comply with 40 C.F.R. § 60.758 using an open flare shall keep up-to-date readily accessible records of the flame or flare pilot flame monitoring specified under 40 C.F.R. § 60.756(c) as well as for periods of operation in which the flame or flare pilot flame is absent.

41. 40 C.F.R. § 60.758(d) provides that owners and operators must keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

42. 40 C.F.R. § 60.759(a)(3)(ii) provides that any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material must be documented and provided to the Administrator upon request.

#### Part 63 NESHAP General Provisions

43. Pursuant to Section 112 of the CAA, EPA promulgated the “National Emission Standards for Hazardous Air Pollutants for Source Categories,” 40 C.F.R. Part 63, Subpart A, 40 C.F.R. §§ 63.1 – 63.16, previously defined as Part 63 NESHAP General Provisions.

44. 40 C.F.R. § 63.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

45. 40 C.F.R. § 63.2 defines “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

46. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in Part 63 must identify explicitly whether each provision in subpart A is or is not included in such relevant standard.

47. Table 1 of 40 C.F.R. Part 63, Subpart AAAA indicates that 40 C.F.R. §§ 63.1(a), 63.1(b), 63.2, 63.4, 63.5(b), 63.6(e), 63.6(f), 63.10(b)(2)(i) to (b)(2)(v), 63.10(d)(5), 63.12(a), and 63.15 of the Part 63 NESHAP General Provisions apply to Subpart AAAA.

48. 40 C.F.R. § 63.6(e)(1)(i) provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

#### The Landfill MACT

49. On January 16, 2003, under the authority of Section 112 of the Act, EPA promulgated the “National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills,” 40 C.F.R. Part 63, Subpart AAAA, § 63.1930 *et seq.*, otherwise known as the “Landfill MACT.” *See* 68 Fed. Reg. 2727 (Jan. 16, 2003).

50. The Landfill MACT applies to MSW landfills that have accepted waste since November 8, 1987, or that have additional capacity for waste deposition, and that are either: (1) a major source as defined in 40 C.F.R. § 63.2; (2) collocated with a major source as defined in 40 C.F.R. § 63.2; or (3) an area source landfill with a design capacity of at least 2.5 million Mg and 2.5 million m<sup>3</sup>, and a calculated NMOC emissions rate of 50 Mg or greater. *See* 40 C.F.R. §§ 63.1930, 63.1935 & 63.1940.

51. In general, the Landfill MACT requires each MSW landfill to comply with the applicable Landfill NSPS requirements for that landfill. *See* 40 C.F.R. § 63.1955(a).<sup>2</sup> The Landfill MACT also provides, in 40 C.F.R. § 63.1960, that the owners and operators of MSW landfills must develop and maintain onsite a written Startup, Shutdown and Malfunction (“SSM”) plan in accordance with the provisions of 40 C.F.R. § 63.6(e)(3).

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<sup>2</sup> For MSW landfills that are subject to the requirements of a federally approved and effective State Section 111(d) plan (CAA) rather than the requirements of the Landfill NSPS, the Landfill MACT requires compliance with the State plan requirements. *See* 40 C.F.R. § 63.1955(a)(2).

52. The Landfill MACT uses the same definition for an MSW landfill as the Landfill NSPS. *See* 40 C.F.R. § 63.1990.

53. The date by which owners and operators must comply with the Landfill MACT depends on whether the particular landfill in question is a new or existing “affected source.” *See* 40 C.F.R. § 63.1945.

54. 40 C.F.R. § 63.1940(a) of the Landfill MACT provides that an “affected source” is an MSW landfill, as defined in 40 C.F.R. § 63.1990, that meets the criteria in 40 C.F.R. § 63.1935(a) or (b). 40 C.F.R. § 63.1940(a) further provides that the affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land. A “new” affected source is one that commenced construction or reconstruction after November 7, 2000, and an “existing” affected source is one that is not “new.” *See* 40 C.F.R. §§ 63.1940(b) and 63.1945(c).

55. 40 C.F.R. § 63.1945(b) of the Landfill MACT provides that existing affected sources must comply with the provisions of the Landfill MACT by January 16, 2004, unless the landfill is an existing affected source that is required to install a GCCS after January 16, 2004, in which case it must comply with the Landfill MACT by the date it is required to install the GCCS.

### **III. FINDINGS OF FACT**

56. The factual findings set forth below are based on an investigation conducted by EPA Region 2 staff pursuant to Section 114 of the CAA. That investigation involved, among other actions, (i) inspecting the Facility on June 17-18, 2014; (ii) issuing two Section 114 Information Requests to the Respondent, dated August 22, 2011, and May 21, 2015; and (iii) reviewing pertinent documents including, but not limited to, the Respondent’s responses to the



Section 114 information requests, New York State Department of Environmental Conservation ("NYSDEC") files relating to the Facility, and the Respondent's records and data. The Respondent provided responses to EPA's Section 114 information requests on October 31, 2011, June 29, 2015, and July 29, 2015.

Respondent's Ownership and Operation of the Facility

57. The Landfill is located at is located at 5600 Niagara Falls Boulevard, Niagara Falls, New York 14304.

58. The Landfill is owned and operated by Allied Waste, which in turn is an affiliate or subsidiary of Republic Services, Inc., the second largest landfill operator in the United States.

59. The October 11, 2011 Section 114 response to questions 3, 4 and item 1.g of the Section 114 Request indicates that Allied Waste (Browning-Ferris Industries at the time) began operating and accepting municipal solid waste at the Landfill starting in 1971. The Landfill is divided into nine (9) separate cells, which are referred to as "landfills" by Allied Waste. In this FOV, they will be referred to as cells. Cells 1-4, "Old" Cell 5, and Cells 6-7 are closed, and "New" Cell 5 and Cell 8 are active. The entire Landfill is projected to be closed by the year 2023.

60. Respondent's Section 114 Response, dated October 31, 2011, and Respondent's 2014 Annual Solid Waste Report, which was submitted to NYSDEC, both identify:

- a. Cells 1, 2, 3, 4 and Old Cell 5 as containing 100% MSW waste;
- b. Cell 6 as containing MSW and other wastes including asbestos, ash, C&D debris, industrial waste, petroleum contaminated soil, sewage treatment sludge;
- c. New Cell 5 as containing MSW, other wastes including asbestos, ash, C&D debris, industrial waste, petroleum contaminated soil, sewage treatment sludge; and

- d. Cell 8 as containing MSW, other wastes including asbestos, ash, C&D debris, industrial waste, petroleum contaminated soil, and sewage treatment sludge.

61. The 2014 Annual Solid Waste Report submitted to NYSDEC indicates that total solid waste deposited in the entire Landfill, as of 2014, is 16,044,162 million Mg.

62. NYSDEC issued nine Solid Waste Management Permits under Article 27, Title 7, and NYCRR Part 360, which are summarized below in Table 1.

Table 1: Summary of Article 27, Title 7, NYCRR Part 360 Solid Waste Management Permits

Effective Date	Expiration Date	Permit Type	Permitted Action	Wastes Permitted
11/7/1981	11/6/1986	Construction and operation	9.5 acre expansion of existing Landfill	Disposal of putrescible waste approved. Wastewater treatment plant sludge referenced.
1/5/1983	7/1/1986	Permit to Construct	Construction of Cell 3, Old Cell 5, Cell 6 & Cell 7	Non-putrescible waste only
1/27/1983	7/1/1986	Revision to Permit to Construct	Revision to Permit 2702 to allow landfilling of putrescible materials in Old Cell 5, Sections 11, 12 & 13 until January 31, 1984	Putrescible materials until January 31, 1984
4/19/1988	10/31/1991	Solid Waste Management	Operation of Cell 6, Subarea A (as part of the Cell 3, Old Cell 5, Cell 6 & Cell 7 project)	Non-putrescible, nonhazardous industrial/commercial wastes and sludges.
8/12/1992	12/31/1994	Renewal, Permit to Operate	Operation of 24 acres of Cell 6 Subareas A & B for the disposal of non-putrescible waste.	Non-putrescible, non-hazardous industrial/commercial waste and sludges.
4/25/1995	4/30/2005	Renewal	Operation of 43 acres of Cell 6 Subareas A, B, C & D for the disposal of non-putrescible waste and construction of 9 acres of Cell 6 Subarea D.	Non-putrescible, non-hazardous industrial/commercial waste and sludges.
6/2/1998	4/30/2005	Modification	Operation of 43 acres of Cell 6 Subareas A, B, C & D for the disposal of non-putrescible waste and construction and operation of 35 acres of New Cell 5 Subareas A & B for the disposal of non-putrescible waste.	Non-putrescible, non-hazardous industrial/commercial waste, sludges, and treated medical waste.
11/1/2002	4/30/2005	Modification	Construction of 16 acres of New Cell 5 Subarea C, operation of 51 acres of New Cell 5 Subareas A, B & C for the disposal of non-bird attracting waste, and post closure monitoring and maintenance of Cells 1-4 & Cell 6.	Asbestos, non-hazardous Industrial/commercial waste, C&D debris, contaminated soils, sludges, and treated medical waste. Wastes which attract birds are prohibited from disposal in the landfill.
12/14/2005	11/30/2015 - current permit and new application	New Permit	Construction and operation of 51 acres of New Cell 5 and 84 acres of Cell 8 for the disposal of non-bird attracting waste and the post closure monitoring and maintenance of Cells 1-4 and Cell 6.	Asbestos, non-hazardous Industrial/commercial waste, C&D debris, contaminated soils, sludges, and treated medical waste. Wastes which attract birds are prohibited from disposal in the landfill.

63. The Landfill is currently operating under NYCRR Part 360 Solid Waste Management Facility Permit, DEC ID 9-2911-00119/00005. The permit has an expiration date of November 30, 2015, but since Allied Waste timely submitted a renewal permit application on May 29, 2015, the permit is extended until NYSDEC acts on the application.

64. Under the current permit, DEC ID 9-2911-00119/00005, the Landfill is allowed to accept asbestos, non-hazardous industrial/commercial waste, construction and demolition debris, contaminated soils, sludges, and treated medical waste. Wastes which attract birds are prohibited from disposal in the Landfill.

65. The October 31, 2011 Section 114 Response to question 5 of the Section 114 Request and a separate letter from Allied Waste to NYSDEC dated January 28, 1999, states that the Landfill does not currently have a gas collection and control system<sup>3</sup>. The response indicates that the Landfill has a passive gas ventilation system in place with process vents. These process vents release landfill gas directly to the atmosphere.

66. Respondent submitted a design capacity report to NYSDEC on September 10, 1998 asserting that the Landfill was below the 2.5 million Mg threshold for further requirements of Landfill NSPS and excluded the solid waste deposited in Cell 6 of the Landfill.

67. Respondent also submitted its NMOC emission rate calculations for the Landfill in the September 10, 1998 report to NYSDEC. The report indicates that the Respondent calculated the NMOC emission rate to be 14.4 Mg per year. This calculation did not include the solid waste in Cell 6.

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3 From 1994 to about 1999 the Landfill installed and operated a GCCS that did not conform to the Landfill NSPS or the Landfill MACT for the purpose of collecting landfill gas and generating electricity. Once the system was installed, it revealed that the gas produced by the Landfill was too low to be economically useful. See Section 114 Information Response 5 dated October 31, 2011 and January 28, 1999 letter from Allied Waste to NYSDEC. indicated that the GCCS was originally installed to enable the Landfill to collect landfill gas and generate electricity, however, once the system was installed, it revealed that the gas produced by the Landfill was too low to be economically useful.

68. In the July 29, 2015 Section 114 Response to question 11 of the Section 114 Request, the Respondent submitted a revised design capacity report as requested by EPA. The revised design capacity report also asserts that the Landfill is below 2.5 million Mg, and excludes the solid waste deposited in New Cell 5, Cell 6 and Cell 8.

69. In the July 29, 2015 Section 114 Response to question 12 of the Section 114 Request, the Respondent calculated the NMOC emission rate as requested by EPA. The Respondent's calculation indicated the NMOC emission rate, at the time of calculation in 2015, is 74 Mg. The Defendant did not include data indicating what year the Respondent reached the 50 Mg NMOC emission rate threshold.

#### **IV. CONCLUSIONS OF LAW**

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

##### **Applicability of the Landfill NSPS and the Landfill MACT**

70. Respondent is a "person" within the meaning of Section 302(e) of the Act.

71. The Facility is a "stationary source," within the meaning of 40 C.F.R. § 60.2 of the NSPS General Provisions and 40 C.F.R. § 63.2 of the Part 63 NESHAP General Provisions.

72. The Facility is an "affected source," within the meaning of 40 C.F.R. § 63.2 of the Part 63 NESHAP General Provisions and 40 C.F.R. § 63.1940 of the Landfill MACT.

73. The Facility is an "MSW landfill," within the meaning of 40 C.F.R. § 60.751 of the Landfill NSPS and 40 C.F.R. § 63.1990 of the Landfill MACT.

74. Respondents are "owners and/or operators," within the meaning of the NSPS General Provisions and the Part 63 NESHAP General Provisions, of an "MSW landfill," within the meaning of the Landfill NSPS and the Landfill MACT.

75. The April 25, 1995 NYSDEC Solid Waste Permit expansion of the Landfill by 9 acres, resulted in an increase in the Landfill's permitted volume design capacity, therefore, the Landfill was modified within the meaning of 40 C.F.R. § 60.751, after May 30, 1991, and subject to the requirements of the Landfill NSPS.

76. The following NYSDEC Solid Waste Permits resulted in an increase to the Landfill's permitted volume design capacity: June 2, 1998 (permitted increase of design capacity by 35 acres), November 1, 2002 (permitted increase of design capacity by 16 acres) and December 14, 2005 (permitted increase of design capacity by 51 acres). Each of these modifications, independently, triggered the applicability of the Landfill NSPS, provided in 40 C.F.R. § 60.750(a) of the Landfill NSPS and also required by 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT.

77. As a result of the April 25, 1995 modification, Allied Waste Landfill first became subject to the Landfill NSPS on March 12, 1996 and to the Landfill MACT on January 16, 2004. 40 C.F.R. § 63.1955(a).

78. The Facility is subject to the requirements of the Landfill MACT because the landfill has accepted waste since November 8, 1987 and has a design capacity greater than 2.5 million Mg and has estimated uncontrolled emissions equal to or greater than 50 Mg/yr as calculated according to 40 C.F.R. § 60.754(a). Also *See* 40 C.F.R. § 63.1935.

#### Design Capacity Violation

79. The Landfill NSPS defines "design capacity" as "the maximum amount of solid waste a landfill can accept, in terms of volume or mass, in the most recent permit issued by the agency regulating the landfill, plus any in-place waste not accounted for in the most recent permit." 40 C.F.R. § 60.751. The Respondent is in violation of 40 C.F.R. §§ 60.752(b)(1)(i)



and 60.757(a) for late submittal of an initial design capacity report on September 10, 1998. This report was required by June 10, 1996 for all landfills modified between May 30, 1991 and March 12, 1996. This report only included information from Cells 1-4 and incorrectly excluded solid waste from Cell 6 asserting that the Landfill was below the 2.5 million Mg threshold.

80. The Respondent is in violation of 40 C.F.R. §§ 60.752(a)(1) and 60.757(a)(3) by failing to submit an amended design capacity report providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to or above 2.5 million Mg and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in §60.758(f).

81. The Respondent is in violation of 40 C.F.R. §§ 60.752(b)(1)(i) and 60.757(a) of the Landfill NSPS and 40 C.F.R. § 63.1955(a) of the Landfill MACT by submitting a revised design capacity report on June 29, 2015 that erroneously excluded the solid waste deposited in New Cell 5 and Cells 6-8, asserting the design capacity of the Landfill to be below 2.5 million Mg.

#### NMOC Emission Rate Calculation Violation

82. The Respondent is in violation of 40 C.F.R. §§ 60.752(b)(1)(ii)(A) and 60.757(b) of the Landfill NSPS for late submittal of the NMOC emission rate calculation on September 10, 1998. This report was required by June 10, 1996. The Respondent calculated the NMOC emission rate to be only 14.4 Mg per year. This calculation did not include the solid waste deposited in Cell 6.

83. The Respondent is also in violation of 40 C.F.R. § 63.1955(a) of the Landfill MACT beginning on January 16, 2004<sup>4</sup>.

84. The Respondent is in violation of 40 C.F.R. § 60.752(b)(1)(ii) for failing to perform an NMOC emission rate calculation annually until the emission rate reaches 50 Mg per year. The Respondent failed to do so starting when it triggered the requirement in 1996.

#### GCCS Violations

85. The Respondent violated 40 C.F.R. §§ 60.752(b)(2)(i) and 60.757(c) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT when it failed to submit a GCCS design plan to EPA within 1 year of triggering the Landfill NSPS requirements. The Respondent should have submitted a GCCS design plan by June 10, 1997.

86. The Respondent violated 40 C.F.R. § 40.752(b)(2)(ii) of the Landfill NSPS when the Respondent failed to install the gas collection and control system by December 10, 1998.

87. The Respondent violated the following operational standards for GCCS:

- a. 40 C.F.R. §§ 60.753(a)(1) and (2) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate a GCCS such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for 5 years or more if active or 2 years or more if closed or at final grade;
- b. 40 C.F.R. § 60.753(b) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate a GCCS with negative pressure at each wellhead except under the following conditions: (1) a fire or increased well temperature, the owner or operator shall record instances when positive pressure occurs in efforts to avoid a fire and submit these records with the annual reports as provided in 40 C.F.R. § 60.757(f)(1); (2) use of a geomembrane or synthetic cover, the owner or operator shall develop acceptable pressure limits in the design plan; (3) a decommissioned well, a well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes shall be approved by the Administrator;

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<sup>4</sup> Landfills that are an existing affected source must comply with the Landfill MACT by January 16, 2004.

- c. 40 C.F.R. § 60.753(c) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate each interior wellhead in the collection system with a landfill gas temperature less than 55 °C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. The owner or operator may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens;
- d. 40 C.F.R. § 60.753(d) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate a GCCS so that the methane concentration is less than 500 parts per million above background at the surface of the landfill;
- e. 40 C.F.R. § 60.753(e) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate a GCCS such that all collected gases are vented to a control system designed and operated in compliance with 40 C.F.R. § 60.752(b)(2)(iii); and
- f. 40 C.F.R. § 60.753(f) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to operate a GCCS at all times when the collected gas is routed to the system.

88. The Respondent violated 40 C.F.R. § 60.755(a) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to monitor the GCCS for compliance with 40 C.F.R. § 60.752(b)(2)(ii) as specified in 40 C.F.R. §§ 60.755(a)(1) through (a)(6).

#### Monitoring Violations

89. The Respondent violated 40 C.F.R. § 60.755(c) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to monitor for compliance with the surface methane operational standard provided in 40 C.F.R. § 60.753(d) as specified in 40 C.F.R. §§ 60.755(c)(1) through (c)(5).

90. The Respondent violated the following monitoring regulations:

- a. 40 C.F.R. § 60.756(a) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT for failure to install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead;

- b. 40 C.F.R. § 60.756(c) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT for failure to install, calibrate, maintain, and operate the equipment specified in 40 C.F.R. §§ 60.756(c)(1) through (c)(2) according to the manufacturer's specifications;
- c. 40 C.F.R. § 60.756(f) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT for failure to monitor surface concentrations of methane according to the instrument specifications and procedures provided in 40 C.F.R. § 60.755(d).

91. The Respondent violated 40 C.F.R. § 60.759(a) of the Landfill NSPS and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT by failing to site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the procedures specified in 40 C.F.R. §§ 60.759(a)(1) through (a)(3) unless alternative procedures have been approved by the Administrator as provided in 40 C.F.R. §§ 60.752(b)(2)(i)(C) and (D).

#### Reporting and Recordkeeping Violations

92. The Respondents violated 40 C.F.R. § 60.757(f) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT by failing to submit annual reports of the recorded information specified in 40 C.F.R. §§ 60.757(f)(1) through 60.757(f)(6).

93. The Respondent violated the following recordkeeping regulations:

- a. 40 C.F.R. § 60.758(a) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT for failure to keep for at least 5 years up-to-date, readily accessible, on-site records of the design capacity report which triggered 40 C.F.R. § 60.752(b), the current amount of solid waste in-place, and the annual waste acceptance rate;
- b. 40 C.F.R. § 60.758(b) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT for failure to keep up-to-date, readily accessible records for the life of the control equipment of the data listed in paragraphs 40 C.F.R. §§ 60.758(b)(1) through (b)(4) as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring shall be maintained for a minimum of 5 years. Records of the control device vendor specifications shall be maintained until removal;

- c. 40 C.F.R. § 60.758(c) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT for failure to keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified in 40 C.F.R. § 60.756 and readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded;
- d. 40 C.F.R. § 60.758(d) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT for failure to keep an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector; and
- e. 40 C.F.R. § 60.758(e) of the Landfill NSPS and 40 C.F.R. § 63.1980(a) of the Landfill MACT for failure to keep for at least 5 years up-to-date, readily accessible records of all collection and control system exceedances of the operational standards in § 60.753, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

94. The Respondent violated 40 C.F.R. § 63.6(e)(3)(i) and 40 C.F.R. §§ 63.1960 and 63.1980(b) of the Landfill MACT by failing to have an SSM plan by January 16, 2004.

95. The Respondent violated Section 502(a) of the CAA, 40 C.F.R. § 60.752(c) of the Landfill NSPS on June 10, 1996 and 40 C.F.R. § 63.1955(a) of the Landfill MACT on January 16, 2004 when the Respondent failed to apply for a Title V permit when the Landfill NSPS was triggered after the Landfill's design capacity became greater than 2.5 million Mg.

96. The Respondent's failures to comply with the NSPS General Provisions and Landfill NSPS are violations of Sections 111 and 114 of the CAA and the Respondent's failures to comply with the Part 63 NESHAP General Provisions and 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT are violations of Sections 112 and 114 of the CAA.

## **V. ENFORCEMENT**

Section 113 of the CAA authorizes EPA to take any of the following actions in response to a respondent's violation(s) of the CAA and regulations promulgated under the CAA:



- Issue an order requiring compliance with the requirements or prohibitions of the Act;
- Issue an administrative penalty order in accordance with CAA Section 113(d); or
- Bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

Furthermore, for any person who knowingly violates any requirement or prohibition of the Act for more than thirty (30) days after the date of the issuance of an FOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

The issuance of this FOV does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law to address the violations described herein.

## **VI. PENALTY AUTHORITY**

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the

applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

## **VII. OPPORTUNITY FOR CONFERENCE**

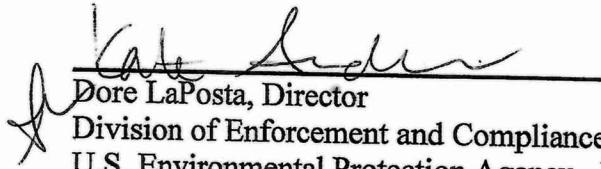
Respondent may request a conference with EPA concerning the violations alleged in this FOV. This conference will enable the Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts the Respondent may have taken or may propose to take to achieve compliance. The Respondent may arrange to be represented by legal counsel.

The Respondent's request for a conference must be confirmed in writing within ten (10) calendar days of receipt of this FOV. The request for a conference, or other inquiries concerning this FOV, should be made by email to [leong.denise@epa.gov](mailto:leong.denise@epa.gov) or in writing to:

Denise Leong  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
Office of Regional Counsel, Air Branch  
290 Broadway - 16th Floor  
New York, New York 10007-1866  
(212) 637-3214

Notwithstanding the effective date of this FOV and opportunity for a conference discussed above, the Respondents must comply with all applicable requirements of the Act.

Issued: **DEC 20**, 2016

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

To: David Grenier  
Division Manager  
Republic Services, Inc.  
5600 Niagara Falls  
Niagara Falls, New York 14304

cc: Robert Stanton, Director  
Bureau of Stationary Sources  
New York State Department of Environmental Conservation  
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Coleen McCarthy, Esq.  
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Buffalo, NY 14203

Terry Mucha, Acting Regional Attorney  
New York State Department of Environmental Conservation  
Region 9 Office  
270 Michigan Avenue  
Buffalo, NY 14203

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample size, the data collection methods, and the statistical analysis techniques.

3. The third part of the report is a discussion of the results of the study. It presents the findings of the research and compares them with the previous studies in the field.

4. The fourth part of the report is a conclusion and a list of references. The conclusion summarizes the main findings of the study and provides recommendations for future research. The references list the sources of information used in the study.

5. The fifth part of the report is an appendix containing additional information related to the study. This may include raw data, detailed calculations, or other supporting materials.

6. The sixth part of the report is a bibliography of the literature cited in the study. This provides a comprehensive list of the sources used in the research.

7. The seventh part of the report is a list of figures and tables. This provides a visual representation of the data and results of the study.

8. The eighth part of the report is a glossary of terms. This provides definitions for the key terms used in the study to ensure clarity and consistency.

DEC 5 19

## Enclosure 2

### CAA § 113

#### § 7413.

##### (a) In general

###### (1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

###### (2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

- (B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

- (C) bringing a civil action in accordance with subsection (b) of this section.

###### (3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

###### (4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

**(5) Failure to comply with new source requirements**

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; <sup>III</sup>
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

**(b) Civil judicial enforcement**

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced
  - (A) during any period of federally assumed enforcement, or
  - (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such

person has violated, or is in violation of, such requirement or prohibition.

- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).
- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

**(c) Criminal penalties**

- (1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to



preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

- (A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);
- (B) fails to notify or report as required under this chapter; or
- (C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter<sup>(2)</sup>

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

- (A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

- (B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

- (i) the defendant is responsible only for actual awareness or actual belief possessed; and
- (ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

- (C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

- (D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

- (E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

**(d) Administrative assessment of civil penalties**

- (1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

- (i) during any period of federally assumed enforcement, or

- (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

- (B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

- (C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to



attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

**(e) Penalty assessment criteria**

- (1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.
- (2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

**(f) Awards**

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,<sup>[2]</sup> or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

**(g) Settlements; public participation**

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

**(h) Operator**

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

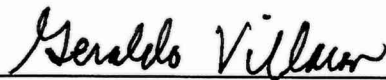




**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY THAT ON December 21, 2016, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7015-0640-0001-0675-5654 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):**

**Mr. David Grenier, Division Manager  
Allied Waste Niagara Falls LLC  
5600 Niagara Falls Boulevard  
Niagara Falls, New York 14304**



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**Geraldo Villaran**

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